

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to Amend Section 28.59
Title 14, California Code of Regulations,
re: Shiner Surfperch

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Emergency regulations are needed to exempt shiner surfperch (*Cymatogaster aggregata*), commonly termed shiner perch, from the recently adopted prohibition on the take and possession of surfperch of the family Embiotocidae from San Francisco and San Pablo Bays (bay) during April 1 through July 31 (Section 28.59, Title 14, CCR). The adoption of this emergency regulatory change prior to April 1, 2002 will aid in preserving the bay's popular sport fisheries for California halibut and striped bass that depend upon the availability of shiner perch for bait to take these species. The sport fisheries for California halibut and striped bass traditionally begin in April and extend through August, and, therefore, coincide closely with the recently adopted surfperch closure in the bay. This emergency action will also forestall significant losses in income for bay area bait harvesters and bait and tackle shop owners that depend to a large degree at this time of year on the sale of live shiner perch to recreational anglers seeking California halibut and striped bass. The emergency regulation will be followed up with a conventional rulemaking to make the regulation change permanent prior to expiration of the 120-day emergency regulation.

The take and possession of all surfperch of the family Embiotocidae, including shiner perch, was prohibited in the bay by the California Fish and Game Commission's (Commission) during its December 7, 2001 final adoption of ocean sport fishing regulations for 2002 - 2003. While other surfperch species are harvested in the bay primarily for human consumption, shiner perch are utilized almost exclusively as a preferred live bait for the seasonal sport take of California halibut and striped bass. California halibut and striped bass, in combination with salmon, sturgeon and leopard shark, support the most significant and popular sport fisheries in the bay.

During Commission adoption of 2002 - 2003 sport fishing regulations, the Department recognized that shiner perch are numerous relative to other surfperch and are important as a bait species. Therefore, the Department recommended and the Commission adopted a 20-fish bag limit for shiner perch (four times the aggregate bag limit for other surfperch) during the open season for surfperch (prior to 2002 any number of shiner perch could be taken by sport and commercial fishermen).

When first adopted by the Commission late last year, the April through July prohibition on the take of surfperch in the bay was not expected to have a significant impact on the halibut and striped bass sport fisheries. Only two public comments on surfperch regulations (directed at the 5-surfperch aggregate bag limit, not the seasonal surfperch closure in the bay) were received during Commission consideration of ocean sport fishing regulations last year. The Department, at that time, thought that alternative species would be suitable as bait for California halibut and striped bass during the closure in the bay. Bay area sport fishermen and bait dealers have since indicated that this is not the case, and point out that between 35,000 and 60,000 shiner perch are taken and sold each year to support the California halibut and striped bass sport fisheries in the bay during the spring summer fishery. Therefore, the inability of sport fishermen to take and possess surfperch during April through July means that anglers may not catch (take) their own shiner perch for use in the bay (usually in small traps as authorized pursuant to section 28.75), and may not possess shiner perch if purchased from bait dealers for use in the bay. This threatens to place severe limits on the ability of anglers to successfully participate in the popular seasonal fisheries for California halibut and striped bass, and will result in severe economic hardship on commercial live-bait fishermen and bait and tackle shop owners that traditionally supply shiner perch to the bay area halibut and striped bass anglers (three commercial harvesters and three bait and tackle shops supply most of the shiner perch to bay area anglers).

The Department recently reassessed shiner perch data for the bay and determined that the authorized take and possession of shiner perch in the bay under the same regulations adopted for the balance of the fishing year (20 shiner perch per angler per day) would not jeopardize the shiner perch resource, and would help support the important California halibut and striped bass fisheries of the bay. Therefore, action now to exempt shiner perch from the April through July, 2002 closure on take of surfperch in the bay will avoid significant disruption of the pending sport fishery in the bay and the livelihoods of commercial bait dealers, thereby promoting the general welfare of the sport fishing public that relies on the bay's sport fisheries, and the welfare of commercial enterprises associated with the take of shiner perch in support of these important sport fisheries.

II. Alternatives

The Commission has determined that no reasonable alternative considered would be more effective in carrying out the purpose of which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. Waiting to adopt the this regulatory change via a conventional rulemaking, which will take approximately 120 days, will result in the bay area sport fishing public having to

forgo most of this year's California halibut and striped bass fishing season and will result in serious economic loss for those who supply shiner perch for bait.

III. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The impact of exempting shiner perch from the seasonal closure on surfperch in the bay is expected to have a positive impact on participants in the bays commercial shiner perch bait fishery and affected bait and tackle shop owners. The regulatory action will allow bait fishermen and tackle store owners to sell shiner perch during the season of highest demand for shiner perch. Live shiner perch are generally sold by the bait fishermen to the bait and tackle shops for about \$0.60 each and are sold by the bait and tackle shops to the public for between \$1.00 to \$1.25 each. Each angler generally purchases from six to 12 shiner perch per day. Therefore, 60,000 shiner perch sold annually would generate about \$37,000 to the bait fishermen, and between \$60,000 and \$75,000 to bait and tackle shop owners, for a total of about \$100,000. Therefore, shiner perch represent a significant source of income for these businesses during the spring and summer fishing season.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

IV. Effect on Small Business:

It has been determined that the adoption/amendment of these regulations may affect small businesses.

V. Authority and Reference:

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by Section 240 of the Fish and Game Code and to implement, interpret, or make specific Section 240 of said Code.

VI. Section 240 Finding:

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Informative Digest\Policy Statement Overview

Under existing regulations the take or possession of surfperch of the family Embiotocidae is prohibited in San Francisco and San Pablo Bays (bay) during April 1 through July 31 (Section 28.59, Title 14, CCR). This seasonal closure, which was first adopted by the Fish and Game Commission in December of 2001, includes a prohibition on the take or possession of shiner surfperch (*Cymatogaster aggregata*) which are a principal bait species for the take of California halibut and striped bass during the traditional fishing season for these species extending from April through August. Therefore, the current prohibition on the take of shiner surfperch coincides closely with the fishing season for California halibut and striped bass, and affects the ability of the public to effectively participate in these popular bay area fisheries.

The emergency regulation change being proposed will exempt shiner surfperch from the new seasonal closure to the take or possession of surfperch in the bay that is scheduled to begin on April 1, 2002. This will provide anglers the ability to continue to take and possess shiner surfperch under the existing daily bag limit of 20 shiner perch per day. This will also serve to alleviate the potential financial impact of the surfperch closure on those commercial bait fishermen and bait and tackle shop owners that supply shiner surfperch to sport fishermen during the California halibut and striped bass sport fisheries in the bay.